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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/560,666	04/27/2000	Dean J. Blackketter	MS1-413US	4370

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EXAMINER

LONSBERRY, HUNTER B

ART UNIT	PAPER NUMBER
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2611

DATE MAILED: 01/05/2004

8

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

09/560,666

Applicant(s)

BLACKKETTER ET AL.

Examiner

Hunter B. Lonsberry

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 36-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 36, 38 and 40-46 is/are rejected.
- 7) ☒ Claim(s) 29, 37 and 47 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 April 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments, see Response, filed 10/10/2003, with respect to the rejection(s) of claim(s) 1-14 and 36-47 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of U.S. Patent 6,600,496 to Wagner.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14, 36, 38, and 40-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,600,496 to Wagner in view of U.S. Patent 5,850,249 to Massetti.

Regarding claims 1-5, 8-12, 36, 45 and 46, Wagner discloses an interactive entertainment system, in which a user watches a program and if interactive content is available, a video icon 41 appears, a user may then actuate the icon 41 and opens the supplemental content which may include web content stored on an outside ISP via a browser (Figures 6,7, column 3, lines 7-27, column 6, lines 18-55). Wagner does not disclose updating a list to indicate that an interactive program is being viewed. Massetti discloses a viewer monitoring system which utilizes an identification code and time

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stamp to figure out what program a user is watching, additionally, it monitors to see if a user is utilizing a VCR or playing a video game, the monitoring results are stored locally and then transmitted from home computer 82 to a central office (column 6, lines 48-67, column 7, lines 22-67, column 9, lines 11-24, line 57-column 10, line 16, column 13, lines 25- column 14, line 12, line 37column 15, line 50, column 16, lines 8-67).

Therefore it would have been obvious to one skilled in the art at the time of invention to modify Wagner to include the monitoring features of Massetti, including connecting to an external device and at what time, in order to figure out what programs users are watching for advertising purposes.

Regarding claims 6 and 13, Wagner discloses an icon in figures 6 and 7, which notifies a user of additional content. Wagner and Massetti do not disclose removing an indicator after a set time period. The examiner takes official notice that removing an indicator after a set time period, such as EPG program information overlaid over video, is well known in the art. Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Wagner and Massetti to remove an indicator after a set time, in order to allow an entire video image to be seen thus removing a distraction.

Regarding claims 7 and 14, Wagner discloses in Figure 2, a memory device 18 and processing control circuitry 15 which run the software to implement display of an icon (column 4, lines 28-44). Massetti discloses that the monitoring results are stored/updated on a home computer 82 (column 6, lines 48-67, column 7, lines 22-67, column 9, lines 11-24, line 57-column 10, line 16, column 13, lines 25- column 14, line 12, line 37column 15, line 50, column 16, lines 8-67).

Regarding claim 38, Wagner discloses in Figure 2, a TV tuner 16 and communication device 17, which may be a modem or dsl adapter (column 3, line 50-column 4, line 21).

Regarding claims 40-44, Wagner discloses an interactive entertainment system, in which a user watches a program and if interactive content is available, a video icon 41 appears, a user may then actuate the icon 41 and opens the supplemental content which may include web content stored on an outside ISP via a browser (Figures 6,7, column 3, lines 7-27, column 6, lines 18-55). Wagner's storage device inherently receives updates from the processor to add and delete television channels from the interactive mode, as the processor must inform the storage device that the interactive mode has been entered or exited, thus beginning or ending display of data which is stored in the storage device's buffer and received from modem/tuner 100. Wagner does not disclose updating a list to indicate that an interactive program is being viewed.

Massetti discloses a viewer monitoring system which utilizes an identification code and time stamp to figure out what program a user is watching, additionally it monitors to see if a user is utilizing a VCR or playing a video game, the monitoring results are stored locally and then transmitted from home computer 82 to a central office (column 6, lines 48-67, column 7, lines 22-67, column 9, lines 11-24, line 57-column 10, line 16, column 13, lines 25- column 14, line 12, line 37column 15, line 50, column 16, lines 8-67).

Therefore it would have been obvious to one skilled in the art at the time of invention to modify Wagner to include the monitoring features of Massetti, including connecting to

an external device and at what time, in order to figure out what programs users are watching for advertising purposes.

***Allowable Subject Matter***

Claims 37, 39 and 47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 6,567,982 to Howe: System and Method for Providing Television Services.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hunter B. Lonsberry whose telephone number is 703-305-3234. The examiner can normally be reached on Monday-Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on 703-305-4380. The fax phone number for the organization where this application or proceeding is assigned is 703-308-5359.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.

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HBL

  
ANDREW FAILE  
SUPERVISORY PATENT EXAMINER  
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